(1987) 05 DEL CK 0043

In the Delhi High Court

Case No : Regular First Appeal No. 496 of 1979

Smt. Mehmood Fatima APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 20-05-1987

Acts Referred:
Land Acquisition Act, 1894 — Section 18, 4, 54, 6

Citation : (1987) 33 DLT 1

Hon'ble Judges : S.S. Chadha, J;S.N. Sapra, J

Bench : Division Bench

Advocate : S.K. Mishra, for the Respondent

Final Decision : Allowed

Judgement

S.N. Sapra, J.—This Regular First Appeal has been filed by the appellants u/s 54 of the Land Acquisition Act, 1894 (hereinafter called the Act) thereby challenging the judgment dated June 5, 1979 passed by Shri Mar Kishan Malik, Additional District Judge, Delhi, in LAC Case No. 133/69 thereby dismissing the reference petition u/s 18 of the Act and confirming the amount of compensation at the rate of Rs. 13/- per sq. yard in respect of the acquired land. In pursuance to Delhi Administration Notification No. 15(60) 61-LSG dated January 15, 1964 issued u/s 4 of the Act and a declaration u/s 6 of the Act published vide Notification No. F. 4(79)/64 L&H dated November 12, 1964, the land, including the land in question, situated in the revenue estate of village Chandrawali (alias Shahdara) Delhi was acquired. The Land Acquisition Collector, Delhi, made and published his Award No. 2178 on November 16, 1968 thereby determining the market value of the land at Rs. 13,000/- per Bigha. The appellants were not satisfied with the amount of compensation so determined by the Land Acquisition Collector with respect to the land in question measuring 2 Bighas 18 bids was comprising in Khasra Nos. 1129/1072/480/848/898/1, 1131/1072/480/848/2, 1135/107/1072/480/840/3, so a reference petition u/s 18 of the Act was filed. In the reference petition, the appellants claimed compensation at the rate of Rs.

100/- per sq. yard. Vide judgment dated June 5, 1979 the learned Additional District Judge dismissed the reference petition and held that the amount of compensation so determined by the Land Acquisition Collector was justified. In the present appeal, the appellants have claimed compensation at the rate of Rs. 100/- per sq. yard.

2. Learned counsel for the appellants has contended that the land in question is situated near Circular Road. Late Shri Hafiz Mohd. Imdad Ilahi was the owner of the land which is situated within the Municipal limits of Shahdara-Delhi and was within the abadi and surrounded by built up areas. Said Shri Hafiz Mohd. Imdad Ilahi wanted to construct a market and for that purpose he had submitted a plan to the Municipal Corporation in 1952 and 1965. The learned counsel for the appellants submits that during his life time, Shri Hafiz Mohd. Imdad Ilahi sold a piece of land measuring 127-3/4 sq. feet out of same khasra number for Rs. 5,000/- on June 6, 1946. According to him this fact has been ignored by the learned Additional District Judge. Learned counsel for the appellants has also relied upon the copy of the Sale Deed Ext. AW1/1 dated October 13, 1960. Hafiz Mohd. Imdad Ilahi sold a piece of land measuring 1141-2/3 sq. ft being a portion out of khasra No. 1135/1072 Khewat No. 2/26 of village Chandrawali for Rs. 3806/- to upper Jamna Valley Electricity Supply Co. Ltd. The learned Additional District Judge has referred to the copy of the Sale Deed Ext. AW1/1 and has held that this was a fancy price because there was already a power sub-station belonging to the said Electricity Supply Company and the Company was in need of the aforesaid piece of land which was adjoining the power sub-station. Therefore, it was held that this was a fancy sale and cannot be a guide for the purposes of fixing the market value of the land for the acquired land. In our view this finding of the learned Additional District Judge is justified.

3. There is no doubt that the land in question is situated within the municipal limits of Delhi Shahdara and was surrounded by abadi and built up areas. With respect to the land covered by the Notification dated November 13, 1959 issued u/s 4 of the Act situated in the revenue estate of village Chandrawali the Division Bench of this Court has fixed the market price at Rs. 15,000/- per Bigha in Sukhbir Saran v. Union of India R.F.A. No. 417 of 1968 and in Raj Kumari v. Union of India R.F.A No. 64/70. In the present case, the notification issued u/s 4 of the Act is dated January 16, 1964. The land in question is superior land there is evidence on the record to suggest that the owners wanted to construct a market on the land.

4. In the year 1946, a piece of land measuring 127-3/4 sq. yards out of the same khasra was sold for Rs. 5,000/-. The prices of land in Delhi were rising. We consider that compensation at the rate of Rs. 28,000/- per Bigha would be fair and just compensation in the present case. Accordingly, the appeal is partly allowed and we award compensation to the appellant at the rate of Rs. 28,000/- per Bigha with proportionate costs. Whatever has been paid will be deducted.

5. In addition to the market value calculated at the aforesaid rate, the appellant

will be entitled to solarium at the rate of 15% and interest at the rate of 6% per annum from the date of taking over the possession till the date of deposit of the enhanced amount of compensation. So far as the entitlement of the appellant to the additional amount in terms of Section 23(1A) at the rate of 12% solarium at the rate of 30% on the market value under the Amendment Act 68 of 1984 and interest at the rate of 9% per annum for a period of one year from the taking over of possession and thereafter 15% on the enhanced compensation till payment, is concerned, we are informed that these questions have been referred to a Larger Bench of the supreme Court and the judgment has been reserved. If and when the judgment is delivered in the matter and if the appellant is found to be entitled to the increased amount, solarium, interest or additional amount, he will be entitled to receive the same from the Land Acquisition Collector in accordance with law. The appellant is also awarded proportionate cost of the appeal.